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DATE: 3/25/2009

**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 647; Relief of Raul Otero v. South Broward Hospital District

Sponsor: Representative Kriseman

Companion Bill: SB 46 by Senator Ring

Special Master: Tom Thomas

Basic Information:

Claimants: Raul Otero

Respondent: South Broward Hospital District.

Amount Requested: \$2,000,000

Type of Claim: Local equitable claim; result of a settlement agreement.

Respondent's Position: Agrees not to oppose and to fully cooperate with the claim bill process. The District has stated that payment of a claims bill in the amount of \$2,000,000 would not impair its ability to provide normal services.

Collateral Sources: Pursuant to injuries sustained as a result of a March 28, 2003 motorcycle collision, the insurer of the at-fault driver tendered his policy limit of \$1 million to Mr. Otero.

Additionally, Mr. Otero has settled his negligence suit against Mt. Sinai Medical Center of Florida, Inc. for \$2 million, the proceeds of which were used to pay off an outstanding Medicaid Lien (\$140,000) and to purchase an annuity for the benefit of Mr. Otero (\$943,000). The remaining settlement funds paid were deposited in Mr. Otero's Special Needs Trust following payment of associated attorney fees and costs.

Attorney's/Lobbying Fees: The claimants' attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Prior Legislative History: This is the first year that this claims bill has been brought before the Legislature.

Procedural Summary: On September 22, 2005, Ana Delgado, as legal guardian of Raul Otero, an incapacitated adult, sued the South Broward Hospital District in the Circuit Court in and for Broward County, alleging negligence. Prior to trial, the parties agreed to a Consent Final Judgment against the hospital in the amount of \$2,200,000. Of this amount, \$200,000 has already been paid to the claimant pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. Of this \$200,000, the claimant and his guardian have each received \$67,510.33 (a total of \$135,020.66) which has been held in an interest-bearing account pursuant to a Fee Agreement with counsel.

Facts of Case: On March 28, 2003, 18-year-old Raul Otero was involved in a near-fatal motorcycle crash and was transported to Memorial Regional Hospital in Hollywood, Florida, where he underwent an above-the-knee amputation to his left leg and a splenectomy. As a result of his injuries, Mr. Otero lost motor function in his right upper extremity.

On the evening of April 16, 2003, Otero was taken to the hospital's MRI laboratory to rule out a right brachial plexus injury as the source for his loss of motor functioning. Prior to his transport, Otero was housed in the hospital's Intensive Care Unit ("ICU"), where he was intubated and on a respirator set at 50% oxygen. Additionally, Mr. Otero was receiving continuous intravenous infusions of several sedatives, including Precedex, Diprivan, and Fentanyl. Before leaving the ICU, Otero was removed from his respirator and ventilated by the respiratory therapist via an Ambu bag and portable oxygen.

Raul was administered 2mg of Versed (a powerful amnestic and sedative) intravenously before the MRI began. Shortly thereafter, Otero became panicked and was unable to tolerate the MRI movement, whereupon he was given a 5mg "push" of Diprivan IV (a push is when a syringe is connected to the IV access device and the medication is injected directly), followed by two additional 5mg boluses (a bolus is the administration of a medication, drug or other compound that is given to raise blood concentration to an effective level). The nurse's notes from this time indicate a slight increase in Otero's heart rate, and a blood pressure that had increased to 168/106.

Lawton Tang, M.D., a surgical resident employed by Mt. Sinai Medical Center, was contacted by the resident nurse on staff, and subsequently ordered an additional 3mg of Versed, as well as 100mg of Succinylcholine (a powerful paralytic agent) over the phone. Minutes later, Otero's cardiac monitor tracing became erratic and his oxygen saturations dropped. A subsequent electrocardiogram (or EKG) revealed ventricular fibrillation, which occurs when there is uncoordinated contraction of the cardiac muscle of the ventricles in the heart, making them tremble rather than contract properly, and a code was called (codes alert staff to various emergency situations). Otero was shocked with 200 joules and immediately went into asystole (colloquially known as flat-lining).

When the code team arrived, Raul was given a total of two amps of Epinephrine (also referred to as adrenaline), two amps of Atropine, two amps of Sodium Bicarbonate, and one amp of Calcium Chloride. Following resuscitation, Otero was transported back to the ICU where he remained unresponsive throughout the night. The next day, a neurologist examining Mr. Otero diagnosed him with anoxic encephalopathy, a type of brain disease. It was later determined that Mr. Otero was without an effective heart rate for a total of approximately ten minutes.

An Adverse Drug Reaction Report prepared by the nursing staff following the code attributed the episode to the 100mg of paralytic agent Otero was administered before ultimately going into ventricular fibrillation, followed by cardiac arrest. Additionally, the code team concluded that the amps of Atropine, Sodium Bicarbonate and Calcium Chloride given to Otero after the code had been called were inappropriately dangerous and contraindicated for a patient experiencing ventricular fibrillation.

Physician testimony supplied by the claimant's attorney indicated that Mr. Otero was not stable enough to be transported from the Intensive Care Unit for an elective MRI during the midnight shift, when staffing levels are lower than at other times of the day. Moreover, there was some indication that neither Otero nor his parents (who speak limited English) were consulted or had given appropriate consent to the procedure prior to his transport.

Further medical testimony suggested that it was improper for Dr. Tang to fail to respond in person to the distress call, and to fail to properly assess the psychological and physiologic (including cardiovascular) status of Otero prior to ordering paralytic drugs tantamount to administering a general anesthetic. It was the medical opinion of several physicians submitting testimony that, without his physical presence in the hospital, Dr. Tang inappropriately ordered the administration of a pharmacologic agent typically administered only by personnel trained and familiar with the drug, and trained in airway management.

Presently, Raul Otero is completely incontinent, quadriplegic, unable to speak, and cannot consistently follow simple one-step commands. A life care plan assessing the current and future medical needs of Otero was prepared and reviewed by an economist in December, 2005. The report calculated the total cost of Otero's care needs to be roughly \$12 million.

Tom Thomas, Special Master

Date: March 25, 2009

cc: Representative Kriseman, House Sponsor
Senator Ring, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master
Counsel of Record